We must also beg leave to disclaim with regard to the article to which we refer, the least intention of applying its observations to the learned and able Court in which these cases arose. For that Court none can have greater respect, or can rest with more confidence on its decisions, than ourselves. Our object was only to deprecate, with earnestness, it is true, but still with great deference, conclusions towards which the Federal Courts in general, appeared to be drifting. The particular case entered very little into the considerations which actuated us; it was only the occasion, not the subject of our remarks; and it may well be that the bridge whose erection has just been restrained, is both hurtful and useless. When the power now claimed is exercised by a judge whose strong good sense and thorough learning are so well known, we might be sure that it would be exerted only in the way most beneficial to the public. But we cannot hope that it will always and in all places, be confided to such competent hands; and that prudence and moderation will invariably accompany its exercise. It involves, indeed, what is substantially an act of legislative discretion; and is enforced by the summary and abrupt process of an immediate injunction.

And setting aside all constitutional considerations, there are few men to whose uncontrolled judgment we would like to trust such a power, especially in the important matters of commerce. This, however, like unfortunately too many other innovations, presented itself with its fairest and most promising side foremost; and some were perhaps inclined to forget, since the doctrine sought to be established would work conveniently in the present, that the precedent might not be looked upon with so much pleasure in the future. Willing, therefore, as we might otherwise be to acquiesce in the wisdom and propriety of this particular decision, it was only the more the duty of those who were convinced of the dangers which be hidden underneath these doctrines, to protest respectfully against their extension.—*Eds. L. Reg.*

In the Court of Appeals, South Carolina, 1854.

W. H. RIVERS, ADMINISTRATOR *vs.* GREGG, HAYDEN & CO. AND OTHERS.

1. An infant who is furnished with necessaries, and the means in cash of procuring them, by his parent or guardian, or from other sources, is *prima facie* not liable for necessaries furnished by a stranger or tradesman on credit; and a party who seeks to evade the operation of the rule must prove a state of destitution and necessity in the infant. *Burghart* vs. *Hall*, 4 M. & W. 727, dissented from.
2. But a policy of insurance effected by the creditor under such circumstances, on the life of the infant as security for his debt is not affected, it seems, by its invalidity: and at any rate, the proceeds of the policy cannot be claimed by the infant's administrator.

This was an appeal in equity from the Chancellor of the Charleston District. The facts of the cases appear in the following opinion and decree of the Court below.

DARGAN, CH.—William M. Edings, was a young man of large expectancies. He possessed an absolute and indefeasible estate, the value of which has been estimated by the master, at thirty-five or forty thousand dollars. This includes the accumulated income of the defeasible estate to which he was conditionally entitled under the will of his grand-father, William Edings; which said income, by a decree of this Court, has been adjudged, since the death of William M. Edings, to belong to his estate. In addition to this, he would have been entitled, if he had attained the age of twenty-one years, to an interest in his grand-father's estate, estimated by the master, at seventy-five or eighty thousand dollars. His absolute and expectant estate would, therefore, together have amounted to $110,000, or $120,000. His vested estate exclusive of what his estate will receive from the decree of the Court on account of the income of his conditional legacy, was only about $10,000. He was born on the 22d of November, 1830, and died on the 29th of November, 1850. On his death, under twenty-one years, the whole of his conditional estate passed under the limitations of his grand-father's will to his only surviving brother, without its ever having vested, except as to the income, in William M. Edings.

In March, 1840, his mother, Mrs. Edings, (now Mrs. Hughes,) was appointed by the Court of Equity, the guardian of his person and estate. From 1840 to 1846, his guardian received from the executor, John A. Fripp, the sum of five hundred dollars per annum for his education and support. Her accounts have been regularly returned and vouched. In 1846, by an order of this Court, his allowance was increased to $1,000. This allowance continued until 1848, when William M. Edings was married. On that event, his allowance, by an order of the Court, was increased to two thousand five hundred dollars, which was ordered to be paid to him and not to his guardian. His wife was also possessed of an estate, which, on her marriage, was settled on her, for her separate use, the income of which, was between six and seven hundred dollars. This income went to the support of the family. The allowance ordered to be paid to William M. Edings, which was intended for the support of himself and family, added to the income from his wife's estate,

made an aggregate of $3,100 or $3,200 per annum. He had two children, one of whom died before him. He left a widow, and one child, who survived him three months. The widow still survives.

On the 23d of August, 1851, an order was made referring this case to the master, with leave to report any special matter. The master was also ordered to publish a notice in one of the city papers, requiring all the creditors of the estate to present and prove their demands before the said master on or before the first of September next ensuing. The accounts of the administrator of William M. Edings were also referred to the master, and the said administrator was ordered to pay to the master, any funds belonging to the estate, that had, or might thereafter come into his hands.

The master now submits his report upon the matters referred. He states, that the administrator has rendered his account, and that the same has been legally vouched. He finds a balance due the estate by the administrator of four thousand one hundred and four dollars and $\frac{37}{100}$. No exception having been taken to this part of the report, it is ordered, that the said report in this respect be confirmed, and become the decree of this Court.

In the same report, the master submits a statement of the claims of the creditors presented before him, and of the evidence by which they were supported. The master, in his report, has discriminated between what he considers necessaries, suitable to the fortune and condition of the intestate, and mere waste and extravagance; rejecting the latter, and allowing the former. The creditors, whose claims have been rejected, have severally filed exceptions to the report; contending that the rejected items of their accounts ought to have been allowed as necessaries. I think the master has allowed enough as necessaries, in any point of view in which the case may be considered. And for this reason, all the exceptions filed by the creditors are therefore overruled.

But the complainant, (the administrator with the will annexed of William M. Edings,) has also filed exceptions to the report, in which he disputes the right of the creditors, (under the circumstances,) to claim anything as necessaries. And this brings up a very important question; a question, which must be of deep concern to

parents and guardians, and to that interesting class of the community, whom, on account of their tender years and need of protection, the Court of Equity has under its own peculiar guardianship and care.

To show the great importance and necessity of this protection, I need not travel out of the facts of this case to present a striking illustration. Under the published order to prove their debts before the master, creditors have presented demands against the intestate's estate, to the enormous amount of $14,205; all, or a very large part of which was contracted within the last four years of his life, and principally within the last two years. Add to this, about $9,000 for money actually received by the intestate on account of his allowance, and on account of the income of his wife's estate, all of which came into his hands, and was consumed, and the aggregate is about $23,000. Thus, we find this infant, whose person and estate was under the protection and guardianship of the Court of Equity, whose estate in possession was only $10,000, and whose indefeasible estate eventually realized was only $35,000,—living for the last four years of his life at the extravagant and wasteful rate of nearly six thousand dollars per annum. And this yet, does not present a perfect view of his extravagance. For, as has already been observed, the principle part of the debts was accumulated within the last two years of his life, when his allowance was at its maximum, and when he also enjoyed the income of his wife's estate. He must have expended after his marriage, seven or eight thousand dollars per annum. I was desirous to have gone accurately into this calculation; but the master's report, and the documents and evidence submitted with it, did not afford the data.

When the Chancellor, by his order, granted this infant out of his estate an allowance of $1,000 *per annum;* and after his marriage, increased it to $2,500 per annum, did he base his decree, upon what, from the evidence before him, he supposed was *necessary* for the support and maintenance of himself and family, according to his fortune and position? If not, how futile was the preliminary inquiry as to what were his prospects and fortune? Did he grant him the annual allowance of $2,500, for, and in lieu of necessaries;

or did he mean, that he should receive his allowance, and be armed with authority to contract debts, and charge his estate with the payment of double that sum in the way of necessaries? If this latter principle is to prevail, then I undertake to say, that the protection which this Court affords to the estates of infants, is a bitter mockery.

The general rule certainly is, that an infant is bound by his contract for necessaries. But there are exceptions equally clear, and well settled. *Necessaries*, when the term is applied to an infant, are those things that are conducive, and fairly proper for his comfortable support and education, according to his fortune and rank. So, that what would be considered *necessary* in one case, would not be so regarded in another. The rule is entirely relative in its operation. But what are necessaries? Meat, lodging, clothing and education, if the means admit of it, certainly fall within the definition. To which may be added in case of marriage, the support of wife, children and servants. All is relative, and is regulated by circumstances. But if an infant is furnished with these things by his parent or guardian, then the same articles, to the same or a less amount, supplied by another under contract, are not necessary to him. To another, not so supplied, they would be necessary. The same remarks apply with equal propriety and force, where the infant is supplied by parent or guardian, or by this Court, with money to furnish himself with necessaries. In some cases, circumstances make it proper, and imperatively demand, that the infant should have the disbursement of his allowance himself. In the case of marriage and house-keeping, the perpetually recurring wants and exigencies of the family, render it impossible that the guardian should always be called on to supervise the disbursement of the fund allowed the infant. Or, if being a youth of fortune, he is sent upon his travels in foreign lands, or even in his own country, the guardian cannot look to the expenditure of the money. It is necessarily entrusted to his own keeping. The brother of the deceased is now abroad on his European travels. Previous to his departure, an application was made to this Court for a proper allowance to defray his traveling expenses. The Court, upon due

consideration, made an order for what was supposed to be the proper allowance; reference being had to the amount of his fortune. Suppose that this young gentleman should expend his allowance, and in addition, should contract debts to the same amount for articles that *prima facie* would be regarded as necessaries? Could these claims be supported, on its being shown, that the infant had an allowance that was amply sufficient to defray all his necessary and proper expenses? I suppose not.

He who deals with an infant, is presumed to know of his infancy. He is bound, at his own peril, to make the inquiry. It makes no difference whether his inquiries result in correct information, or the reverse. It is no excuse, if he honestly supposed from his appearance or other circumstances, that the infant was an adult. The protection of this defenceless class of persons would be very inadequate, if this principle is not further extended. The only safe rule for the security of infants and their estates, is, that he who credits the infant for necessaries, should be bound to know, whether the infant has been supplied with a sufficient amount of those articles by the parent or guardian, or from some other source. The consequence, if any other rule than this prevails, would be, that an infant's estate might be made liable for double the amount of *necessaries*, that were *necessary* for him.

I will not say, that an infant, after being supplied with necessaries, or a proper allowance in cash to procure them, may not, under some circumstances be liable on a contract for necessaries. Suppose, for example, after being furnished with all things necessary for him, he should give them away, or sell them, or waste the proceeds in riot and debauchery. Or suppose, that after having placed in his hands in money, an allowance sufficient for all his wants, he should be robbed of it, or should lose it by accident, or at games of chance. Then, the infant would be reduced to want for the means of bare subsistence. Must he starve with a plenty in his coffers? Would he not be bound by a contract for necessaries under these circumstances? This is stating the strongest imaginable case against the rule. But its wisdom is still manifest. In a case like that supposed, I would say, that the infant would be

bound. But I would further say, that the party who alleged this extraordinary state of facts, must prove them. In other words, when it is shown, that an infant is supplied with necessaries by his parent or guardian, or with funds amply sufficient to procure them, the presumption of law and of reason, must be, that he does not stand in need of credit to obtain what is necessary for him. And after this *prima facie* showing, he who alleges, that notwithstanding this, the infant was in a state of destitution, must take upon himself the burthen of proving his allegation. If he does this in a satisfactory manner, his claim should be allowed. But even then, it should be limited to bare necessaries; and should not be allowed to embrace articles of luxury, which would otherwise be suitable to the infant's fortune and condition in life.

To illustrate these views further, I will advert to what I suppose would be the course which a case like this might take in a court of law. The plaintiff brings his action of assumpsit for goods, wares, &c. The affirmative is with him. He must prove his demand, to be entitled to recover. The defendant, however, has pleaded infancy. This admits the account, and rests the defence upon the affirmation of a fact which the defendant is bound to prove. If to this plea, the plaintiff has replied, that the demand was for necessaries suitable to the defendant's fortune and condition in life, the burthen of proof is again shifted. The plaintiff must prove his replication. This he does, by showing, for example, that the account is for board, clothing, education, &c. On this proof, he would be entitled to recover. But if the defendant has rejoined, that the articles furnished were not necessary to him, because he was furnished with the same articles by his parent or guardian, *here* the proof of all the facts stated in the previous pleadings would become unnecessary. The defendant would be bound to prove his rejoinder. But if the plaintiff has filed a sur-rejoinder, alleging, that although the infant defendant was furnished with support and maintenance, or the means of procuring it by his parent or guardian; *yet*, that by the defendant's improvidence or misfortune, he had wasted or lost his means, so that he was reduced to a state of destitution, and the articles furnished by the plaintiff

were thus become necessary for the infant, *here*, the affirmative is again shifted, and the *onus* is with the plaintiff. In this Court, happily, special pleading never prevailed. But what is valuable and subservient to the ends of justice in the philosophy of that system, is applied *here* in practice in a short hand way; though this Court never suffers itself to be baffled by its subtleties, or entangled in its technicalities.

In a case like that before me, it is not sufficient for the creditor of an infant, for the purpose of obviating the objection that the infant was furnished with necessaries, or the means of procuring them by his parent or guardian, or from other sources, to argue *hypothetically*, that the infant notwithstanding, *might have been* in a state of destitution, which rendered the articles furnished by the plaintiff necessary for him. In a court of equity, as in a court of law, he must state the fact affirmatively, and prove it positively.

The conclusion is, that an infant who is furnished with necessaries, or the means in cash of procuring them, by his parent or guardian, or from any other source, is *prima facie*, not liable for necessaries supplied by a stranger or tradesman on a credit; and that the party who seeks to evade the operation of the rule, and bring his claim under an exception, must prove the destitution and necessities of the infant. And I persuade myself that the most specious objection to the rule has been sufficiently answered.

I was pressed in the argument at the bar, with a recent English decision; which I admit is directly to the point, and opposed to my own conclusion in this case. But for this decision, I should not have deemed it necessary, or incumbent upon me, to elaborate my views upon the subject at such great length. The decision cited though not binding upon me, is entitled to great respect. The case is that of *Burghart* vs. *Hall*, 4 Meeson and Welsby, Exchequer Rep. 726. In this case, the infant had an allowance £500 of *per annum*, besides his pay as a captain in the guards. Lord Lyndhurst had directed an issue to be tried by a jury. Lord Abinger, in charging the jury, had laid it down, that a tradesman would not be at liberty to furnish necessaries to an infant, when he might have known if he had made the proper inquiries, that the infant

was supplied with an income for his own support. Sir L. Shadwell, had expressed the same opinion in a case against the same party. *Muturs* vs. *Hall*, 6 Sim., 465. In *Burghart* vs. *Hall*, the Court of Exchequer granted a new trial on the ground of misdirection of the presiding judge, with the full concurrence of Lord Abinger, who retracted his former opinion, and alleged that he had been convinced by the argument of Mr. Erle, the counsel for the plaintiff. Lord Abinger, who delivered the judgment of the Court, stated the law to be, that an infant is capable, not only of entering into a contract for necessaries for ready money, but also into any reasonable contract for necessaries on a credit, though he has an income of his own, and an allowance that was amply sufficient for his support. I must be permitted to say, that the argument of Mr. Erle, though ingenious, has failed to convince me; and I prefer the first, and in my opinion, the better judgment of his Lordship.

Lord Lyndhurst, deeming the decision in this case authoritative upon him, implicitly followed it without any further argument or precedent, and gave a decree accordingly.

I find no case that goes this length. In McPherson on Infancy, 507, it is laid down that, "where the plaintiff has succeeded in showing the supplies, in respect of which the action is brought, were suitable in themselves, to the age and station of the defendant; the latter may show, that he was supplied, no matter from what quarter, with necessaries suitable to his situation; and in such a case, a tradesman cannot recover for any further supply." See *Bainbridge* vs. *Pickering*, 2 W. Bl., 1835. And it has frequently been held, that a person furnishing necessaries to an infant, under these, and the like circumstances, is bound to make inquiry whether the infant be not otherwise supplied. *Cook* vs. *Payne*, 3 Car. & P. 114; *Story* vs. *Perry*, 4 *id.* 526; *Ford* vs. *Fothergil*, 1 Esp. 21.

In the case last cited, it was held by Lord Kenyon, to be incumbent on a tradesman, before he gives credit to an infant for what may *prima facie* be considered as necessaries, to make inquiry whether he is not provided by his friends. And in *Story* vs. *Perry*,

it was decided by Lord Tenterden, that a tradesman trusts an infant for necessaries at his own peril, and that he cannot recover, if it turns out that the infant has been otherwise supplied.

In a more recent case, *Burghart* vs. *Augerstein*, 6 Car. & P. 690, it was ruled, that when an action was brought against an infant for necessaries, it was competent for him to prove that he had been supplied with the same articles (clothes) from other tradesmen besides the plaintiff; and if the proof be, that the defendant had been previously so supplied, the plaintiff could not recover, although the defendant had not paid the prior bills.

To the same effect, are the cases on this subject, decided by the Courts of South Carolina. In *Conolly* ads. *Hull*, 3 McC. 6, it was held, upon what was considered "a well settled principle, that an infant who lives with and is properly maintained by her parents, cannot bind herself to a stranger for necessaries." And the Court proceeds to observe, "whether the mother in this instance was able, and did maintain her daughters in a manner suitable to their condition, did not appear; but it ought to be *presumed*, until the contrary be proved." In *Edwards* vs. *Huyhes*, 2 McCord., ch. 21, it was ruled that an infant is not bound for necessaries where he has a "natural or legal guardian to provide for them."

It is a fallacy to suppose, that a distinction can be drawn between the cases where an infant is actually supplied with the necessaries themselves, and that, where he receives an allowance under an order of the Court, which he is to disburse himself in their purchase. If it be urged that the infant may waste or misapply his allowance, and thus be reduced to a state of destitution that would require his necessary wants to be otherwise supplied, it is obvious, that the argument applies with equal force to the case where the infant is supplied with the necessary articles for his use and consumption. These he may sell, give away, or waste, so, that it may become necessary that he should have more, to save him from nakedness and starvation. The party who alleges such a state of destitution as a justification for giving credit to an infant who is otherwise amply provided for, must take upon himself the burthen of proving it. And if he succeeds in this, he will have such relief as is proper under

the circumstances. But until such a state of destitution is made to appear, it must be presumed, that an infant who has an ample allowance in cash, does not need to be supplied with necessaries on credit.

To test this question still further: If the guardian had paid these accounts, would she have been allowed to charge them against her ward's estate? It is a waste of time to ask the question.

No guardian has the right, without the permission of the Court, or without special circumstances of necessity, to transcend the income of his ward's estate in expenditures for his benefit. And the Court in decreeing allowance, always has reference to the same general rule, from which it never departs, unless under special circumstances. And yet, it is contended, that this rule may be violated by tradesmen for their own profit and speculation.

The truth is, that these claimants *did* trust this unhappy youth at their own risk. They knew that they would be paid if he lived, and came to his inheritance. They, *for a consideration*, doubtless, decided to take the hazard. That this is the case, is shown by the fact, that two of them, whose claims are the largest, insured the infant's life for an amount sufficient in one case, to save them from loss, and in the other, to pay half the debt.

I think that the claims of these creditors should not be allowed, for the foregoing reasons. And I further think, that they are entitled to no commiseration. There is but little doubt, that the ill-fated youth was brought to an untimely grave by the improper and unbounded credit which was extended to him by these persons, and others, for their own profit. E. W. Mathews, Esq., bears the following melancholy testimony: He says: "that Wm. Edings, the minor, was his nephew. He and the mother and grand-father of Mr. Edings, used every effort to keep him at school during his minority; but the large credit he obtained, placed him beyond the control of his guardian and friends. His mother even refused him money to return from school, and he had to borrow the same to do so. From *his* knowledge of the circumstances of the case, he firmly believes that the system of credit extended to his nephew, was the cause of his ruin and early death; and that such is also the opinion of the mother of Mr. Edings. Mr. Edings' mother used all her endeavors to check this system of credit, by refusing to pay a number of bills."

These creditors now come *here* for payment. They extended every facility to the inexperienced and infatuated victim of pleasure. They afforded the stimulus to his brief, giddy, and fatal career. They turned a deaf ear to the remonstrances of his friends. The tears and entreaties of his mother were unavailing. It would be a gross perversion of justice to allow these claims. It is ordered and decreed, that the exception of the plaintiff to the master's report be sustained, and that the whole of the claims of creditors reported upon by the master, be rejected.

There are other matters in this case which I must now decide. The plaintiff's testator Wm. M. Edings, in his lifetime contracted a debt with the defendants, Gregg, Hayden & Company, who were jewellers, to the amount of about two thousand four hundred dollars, for goods and wares in their line of busines. For the purpose, they say, "of giving greater certainty to their claim against the said Wm. M. Edings, they, the said Gregg, Hayden & Co., with the assent of W. M. Edings, effected an insurance on his life, with a Boston Insurance Company. The policy was for the term of four years, and the sum of $2,500. It bore date the 13th Oct. 1848. The premium on the policy, amounting to $58, was paid by Gregg, Hayden & Co. It was negotiated in the name of Wm. M. Edings, who in pursuance of a previous agreement, assigned the policy to Gregg, Hayden & Co. The premium was charged in their books against Edings, but no part of it has ever been paid by him or his legal representative. Since the death of Edings, Gregg, Hayden & Co. have received from the Insurance Company twenty-five hundred dollars, with the consent of the administrator, and under an agreement with him, that the said sum of $2,500 shall be held by them, subject to the order of this Court in the premises. They claim only so much of the net proceeds of the said policy as will be sufficient to satisfy their demands against Wm. M. Edings, and offer to pay over the balance to the administrator. If they retain the net proceeds of the policy, they have been overpaid.

The defendants, Edgerton & Richards, also having demands against Wm. M. Edings to the amount of $4,531 71, effected an insurance upon his life for the same purposes as in the case of Gregg,

Hayden & Co., in the New York Life Insurance Company, for the sum of $2,000. The policy was dated the 15th March, 1847. It was taken in the name of Edgerton & Richards, who paid out of their own funds the premium and expenses for four years. It was all done with the knowledge and consent of Wm. M. Edings. After his death, they received from the Life Insurance Company of New York the sum of $1,983 87, according to the terms and conditions of the policy. They paid in the way of premium, &c., during the four years, the sum of $103. The net proceeds of the policy were $1,880 87½, a sum not sufficient to pay one half of their claim.

The administrator claims the whole net proceeds of both of these policies, as belonging to the estate of Wm. M. Edings. I have come to a different conclusion. I think that these parties having negotiated these policies at their own expense, and for their own benefit and security, are fairly entitled to have the net proceeds applied in the way they intended, namely, as payments upon their claims against Edings. They were obviously intended as collateral securities. A third party who is *sui juris*, may become bound for the debt of an infant, though the infant would be discharged. And I apprehend it would make no difference whether the third party were a corporation or a natural person. If the creditor of an infant, for a consideration paid by himself, obtains a guaranty of the infant's debt from a third party, I see no reason why such third party should not be bound, nor why the creditor should not have the benefit of his bargain. This I think is the true nature of this transaction. The infant certainly is not entitled to the funds thence arising. This would be to give him the whole of the creditor's goods on the plea of infancy, and as a premium on the plea, the whole proceeds of the policies.

It is ordered and decreed, that the exception of Gregg, Hayden & Co., to the master's report on this point, be sustained, that the claim of the said Gregg, Hayden & Co. against Wm. M. Edings be paid out of the net proceeds of the policy received by them, with interest on their claim till they received payment from the said Life Insurance Company; and that they pay over the balance, if any, to the administrator of Wm. M. Edings, which they have offered to do in their answer.

It is further ordered and decreed, that the exception to the master's report of Edgerton & Richards which relates to the proceeds of the policy of Insurance received by them be sustained, and that the said Edgerton & Richards be allowed to retain the proceeds of said policy, as a payment on their account against the said William M. Edings.

It is further ordered and decreed, that the master's report be conformed to this decree.

It is further ordered and decreed, that all the parties in this cause pay each his own costs; except the administrator with the will annexed of Wm. M. Edings, whose costs shall be charged upon the estate.

The Court of appeals affirmed the decree.

Cooper & Rivers, for Complainants.

B. J. Whaley, *W. Whaley* and *Brown & Porter*, for various defendants.

In the Court of Common Pleas, Hamilton County, Ohio, January Term, 1854.

FRANCIS A. PARISH *vs.* ELIPHALET FERRIS ET AL.

1. "Heirs" construed to mean children, from the context.
2. Adverbs of time, as *when*, *then*, *after*, *from*, &c., in a devise of a remainder are to be construed as relating to the time of the enjoyment of the estate, not to that of its vesting in interest.
3. Devise of a life estate, and if the first taker "should die without children," then over, *held* under the circumstances to mean *without having had* children.
4. A testator devised as follows: Secondly, "to my daughter E, the use" of 267 acres of land, "during her natural life, to have full use and control of the same, with the appurtenances to the same belonging, as long as she shall live." Thirdly, He devised to his "daughter E's children, (if she shall have any heirs,) their heirs and assigns forever," the 267 acres of land "after E is done using and occupying it, and at E's death." Fourthly, If his "daughter E should die without children," then he devised the 267 acres to his "brothers and sisters, their heirs and assigns forever, after the death of E as aforesaid." E was unmarried at the testator's death, but married afterwards. She had but one child, which lived only a few hours, and soon died herself, having devised all her estate to her husband.